

FILED
U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

IN THE
Supreme Court of the United States

October Term, 1968

No. 776

UTAH PUBLIC SERVICE COMMISSION,

Appellant,

v.

EL PASO NATURAL GAS COMPANY, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF UTAH

PETITION FOR REHEARING

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SOUTHWEST GAS CORPORATION, ("Southwest Gas") intervenor below and appellee herein, respectfully petitions this Court for a rehearing of the above-styled cause pursuant to Rule 58 of the Rules of the Supreme Court of the United States, on the following grounds.

I.

**SOUTHWEST GAS WAS DEPRIVED OF ITS RIGHT
TO BE HEARD ON THE MERITS OF THIS CASE.**

Southwest Gas shares the Supreme Court's desire for an early disposition of this case, which has kept the

Western United States gas market in a state of uncertainty for twelve years, but it respectfully urges that this Court's decision in this case deprived Southwest Gas of an opportunity to be heard on matters of surpassing importance to this petitioner.

The Court's order of April 21, 1969, indicated only that the appeal of the Utah Public Service Commission ("Utah") might be revived. Southwest Gas was opposed to that unusual procedure, because it earnestly hoped that this case was finally at an end and because it was satisfied with the result reached in the trial court. But it understood from the Court's order that the only question to be taken up at that hearing was whether Utah's appeal was going to be heard despite Utah's attempts to withdraw it, and Southwest Gas considered its interests on that narrow procedural point adequately represented by the Department of Justice, Colorado Interstate Gas Company ("CIG") and El Paso Natural Gas Company ("El Paso"). Southwest Gas did not understand that the merits of the case would be considered in any way at this hearing; yet it learned to its dismay on June 16 that this Court had disposed of the entire case in a manner completely different from the result reached by the trial court.

Southwest Gas respectfully submits that it had no actual or constructive notice that this Court intended to decide this case on its merits, and that its right, as an intervenor and an appellee, to be heard on the merits in this Court was foreclosed by the procedure employed by this Court.

II.

THIS CASE WAS NEVER HEARD ON ITS MERITS.

Although Southwest Gas was not represented at the hearing on April 29, it is obvious from the transcript of those proceedings, as from the briefs filed, that the merits of the case were barely touched upon. This is a case of great complexity, and it should not be decided without a full hearing.

III.

THERE IS NO GAS IN THE SAN JUAN BASIN THAT CAN BE REALLOCATED.

Most important, Southwest Gas urges upon this Court that its ruling regarding gas reserves cannot be reconciled with the facts. Southwest Gas will be uniquely affected by the fairness of any allocation of gas reserves, since it is the only intervenor in the case below that would purchase gas both from El Paso's Southern Division and from the divestee ("New Company") of El Paso's Northwest Division. Thus Southwest Gas cannot in any sense "win" this case as a consequence of a disparity in the allocation of reserves or any other benefits between El Paso and New Company; Southwest Gas can only "lose" if the divestiture results in the imposition of disproportionate burdens upon either El Paso or New Company.

It is a fact established in the trial court, and well known otherwise in the industry, that there are no known reserves of uncommitted gas in the San Juan Basin or elsewhere in that part of the United States. All the gas reserves in the San Juan Basin are under certificate and

are already committed to customers, including Southwest Gas. The trial court cannot reallocate what is not there.

Southwest Gas urges that this Court give all the parties to the appeal the opportunity to brief and argue the questions whether any "reallocation" could be accomplished without taking away, from companies such as Southwest Gas, gas already committed and flowing to them, and whether the 400,000,000 MCF per day of Canadian gas available to New Company does not give it excellent California capabilities; capabilities which are superior, in fact, to those possessed by Pacific Northwest Pipeline Company at the time it was acquired by El Paso.

IV.

THE RESTRICTIONS PLACED ON THE FINANCIAL TERMS OF THE DIVESTITURE WILL MAKE IT DIFFICULT TO GET A NEW COMPETITOR INTO OPERATION WITHIN A REASONABLE LENGTH OF TIME.

The proposal that the properties to be divested be sold for cash was considered in detail in the trial court, as was the exchange or "roll-over" of the debt. The exchange of debt was an integral part of each applicant's plan, and no applicant represented that it could purchase all of the equity in these properties for cash absent a public offering of the stock of the New Company. This involves a lengthy and highly uncertain financial procedure which is completely at the mercy of the stock market. A stock-for-stock transaction is simpler and much faster. As the Court below found, "the stock ex-

change plan . . . is better suited (than the cash sale plan) to enable CIG to proceed promptly with the steps necessary to enable it to become a competitive factor in the California market . . .” *United States v. El Paso Natural Gas Company*, 291 F. Supp. 3, 30 (1968). Furthermore, the restrictions placed on the conversion and ownership of New Company’s stock utterly remove any possibility of El Paso or its stockholders influencing New Company.

This Court’s act in striking down the debt roll-over will have far-reaching ramifications. It will delay the date of divestiture because the applicants must now start from scratch to raise \$170,000,000. It will inevitably result in higher rates to New Company’s customers, of which Southwest Gas is one, because the higher cost of money raised at today’s interest rates will significantly increase New Company’s cost of service. It may even develop that New Company would not be a viable entity at all because of the squeeze created by the competitive pressure on fuel rates in the Northwest and New Company’s higher debt service requirements.

This would be a high price to pay even to avoid some realistic possibility of an anticompetitive combination arising out of the debt roll-over. But Southwest Gas fails to see how the debt roll-over arrangement adopted below could possibly “help keep the two companies in league.” Southwest Gas respectfully suggests that this Court did not fully understand that arrangement.

Southwest Gas respectfully submits that this Court should rehear this case so that the parties may be given

an opportunity to argue the issues raised in this Petition and fully develop the facts, to the end that consequences calamitous to Southwest Gas and its customers may be averted.

Respectfully submitted,

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